Supreme Court, U.S.
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NO. 90-1877.

IN THE

SUPREME COURT OF THE UNITED STATES

RAJENDAR K. SINGAL,

PETITIONER

V.

GENERAL MOTORS CORPORATION,

RESPONDENT

_____/

SUPPLEMENTAL BRIEF TO THE WRIT OF CERTIORARI TO THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS.

Respectfully Submitted,

By: Rajendar K. Singal

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Dated: September 16, 1991.

QUESTIONS

1. Is the Employee Handbook legally binding on the Respondent for making decisions pertaining to employee's employment?

2. Is the respondent guilty for breaking implied covenant of good faith and fair dealing in the contract with the petitioner due to Employee Handbook?

3. Did the respondent racially discriminate the petitioner by firing him?

4. Should the petitioner be allowed to amend his original complaint with respect to AGE BIAS COUNT?

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GENERAL MOTORS CORPORATION,

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BEST AVAILABLE COPY

SUPPLEMENTAL BRIEF FOR WRIT OF CERTIORARI TO THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS.

The purpose of this supplementary brief from the petitioner is to bring to the attention of the Honorable Court information very important to some of the issues raised in the instant case due to two recently decided cases, one by the Supreme Court and the second by Federal Court in New Jersey.The information on these two decisions became available to the petitioner after he had filed his petition for writ of certiorari.

The petitioner has requested that General Motors Employee Handbook should be decided legally binding as an implied contract of the petitioner with the repondent. This employee handbook was given to the petitioner on the first day he started working for General Motors in September of 1975. Further, the personnel department of CADILLAC MOTORS had

be read thoroughly by him because it is used for resolving any and all employee problems. In the instant case, the respondent grossly violated the terms stated in this handbook due to petitioner's race, national origin and age. Following statements are quoted from the Employee Handbook:

Pages 2 and 3 Of The Employee Handbook:

"1. YOUR WORK ENVIRONMENT: Our personnel policies are designed to help build a work environment which recognizes you as a valuable resource, whose full involvement in the buisness is not just desirable but essential to the success of the Corporation. In turn, General Motors trusts that you will give your very best efforts and will work cooperatively with others to accomplish General Motors' buisness goals. Thus, there is a strong partnership between you, your supervisor and all other GM people, in which the good of each person depends on the willing cooperation and trust of all the

others. To foster this environment, GM has three overall employee objectives. First, to help assure that you are treated with dignity and respect in relationship with the Corporation; second, to recognize you as an individual, and third, to help you and all GM people grow on the job and work as a team so that we will have the highest quality work force."

"EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION.

In keeping with our goals of individual recognition and treatment characterized by dignity and respect, we extend hiring and promotional opportunities to qualified applicants and employees on an equal basis regardless of age, race, color, sex, religion or national origion.

We regard sexual harassment as a violation of Equal Employment Opportunity Policy. You should express your concerns if you feel you have been subject to harassment, and you should have no fear of retaliation by raising

them. All complaints will receive a thorough and prompt investigation".

"Advancement Based On Merit. General Motors has a well-defined selection process which is in operation at every GM location to make decisions regarding hiring, promotions, transfers and other forms of movement. Selection decisions must be based exclusively on merit, and capable of withstanding critical review".

ON PAGES 7 AND 8 OF EMPLOYEE HANDBOOK:

"THE GM APPRAISAL PROGRAM":Relationship and responsibilities are, of course a two way street. General Motors knows that if you are to do your job most effectively, you need the support of a knowledgeable supervisor. As a consequence, GM supervisors are selected carefully and trained to provide you and others with coaching, counseling, recognition and constructive assistance, when it is needed. Your supervisor will also take time to be a good listener when you have questions or concerns about your work, your career or

any other aspect of your relationship to General Motors.

Three important tools will help you and your supervisor meet your responsibilities and will help each of you develop a strong working relationship with the other. These are the GM APPRAISAL PROGRAM, THE OPEN DOOR POLICY, AND QUALITY OF WORK LIFE ACTIVITIES.

Your supervisor will appraise your performance at least annually. The GM Appraisal Program is designed to be fair and to involve you completely. It also calls for you and your supervisor to have periodic, informal discussions about how you are doing so that there will be no surprises when your performance is formally appraised.

When it is time to write your appraisal, your supervisor will give you an opportunity to complete an appraisal warksheet.

During the appraisal interview, all sections of the written appraisal form and your appraisal worksheet will be discussed with you. You will be asked to write your comments

and sign the appraisal form, to acknowledge that your appraisal interview has taken place. The completed forms are then reviewed by the Personnel Department to assure that all required steps have been followed. <u>If you disagree with your appraisal, you are encouraged to use the GM Open Door Policy.</u>

<u>"THE OPEN DOOR POLICY"</u>

"The objective of the Open Door Policy is to make sure you have an open channel of communication to your supervisor and to other managers when you have a question, concern or complaint about any aspect of your relationship with General Motors.

Although it focuses on resolving differences- and that is an important objective - the intent of the Open Door Policy is that the "doors" of management are open to you for any reasonable purpose. For example, if you have questions about GM policies, or if you want guidance concerning training and development or career opportunities, or if you wish to discuss any other matter, you are encouraged

to talk with your supervisor. You should understand, of course, that using the Open Door will not always result in the action you desire. However, it does provide you the opportunity to review your concerns not only with your supervisor but , if necessary, with higher levels of management. It also guarantees an objective and thorough review of your situation.

To use the Open Door, you should follow the steps below:

- Talk with your supervisor as soon as a concern or question arises. It is your supervisor's responsibility to take time to discuss any questions or concerns related to your GM employment.
- If you and your supervisor cannot resolve your concern, your supervisor will help you seek resolution through higher levels of management in your department.
- Although you are urged to talk with your supervisor first, there may be situations in which you prefer not to do so. In these

instances, the Open Door permits you to contact the Personnel Department. The Personnel Department generally will work through your supervisor or a higher level manager to resolve the matter within your department. If the matter cannot be resolved in your department, the Personnel Department will arrange for a review by the head of your employing unit.

- If your questions or concerns have not been resolved to your satisfaction within your unit, division or Central Office Staff, you are free to request a further review through General Motors Central Office, in Detroit. These requests should be made in writing to the Vice President, Personnel Administration and Development Staff, who will make the final determination for the Corporation. Your case will be reviewed with you and your management, and you will receive written response.

<u>When using the Open Door you are assured not only freedom from reprisal, but also active assistance from your management to resolve</u>

your concerns at the lowest possible level in a timely manner. To this end, there is a designated person in your Personnel Department whose responsibility is to assure that your concern is understood clearly by management. The policy is designed to protect you from improper treatment by assuring you an open channel of communication and a thorough review of the facts and circumstances surrounding your situation."

"JOB SECURITY":

On page 24 of the employee handbook:

"The management of General Motors recognizes that job security is important to GM and to its people, and the Corporation has a good record of providing job security for its salaried employes. Continuous employment is important because employees who are secure in their jobs will better direct their attention to the objectives of the job and because layoffs place a real burden on the affected employes and their families".

FACTS IN THE INSTANT CASE.

Facts in the instant case clearly show with an overwhelming evidence that the petitioner was continuously and racially harassed and retaliated upon by the Respondent when he followed GM'S open door policy. In fact, the last performance evaluation of the petitioner was delayed by more than 4 months and was never given to him even when he had requested his supervisor about it on about 4-5 occasions during the 4 months period. In the end, he had an argument with his supervisor about delays in his performance evaluation in February, 1984. Due to this argument and subsequent to petitioner's following of GM'S OPEN DOOR POLICY in order to resolve this matter of his performance evaluation, the petitioner was fired by the respondent. There is overwhelming evidence in the instant case regarding petitioner's unfair performance evaluations, his unfair and racially motivated treatment in promotions due to his age, race, and national origin which are gross violations of written

statements in the employee handbook, and are serious violations of the Federal Anti-DISCRIMINATION LAW.

In the New Jersey case, Ronald Fregara v. Jet Aviation Buisness Jets, WEST'S FEDERAL SUPPLEMENT, VOL.764, NO.3, AUGUST 5, 1991, and other references in that case, the court has ruled the employee handbook to be legally binding provided the employe follows the grievance procedures in the handbook. Mr. Fregara lost the case because he did not follow the grievance procedure stated in the employe handbook. In the instant case, the petitioner followed GM's OPEN DOOR POLICY in order to resolve his employment issues, but was always retaliated upon by Management during and after petitioner's following of GM's OPEN DOOR POLICY.

The New Jersey Supreme Court has held that there is an implied covenant of good faith and fair dealing in every contract. Onderdonk v. Presbyterian Holmes of N.J. 85 N.J. 171, 182 (1981); Bak-A-Lum v. Alcoa Building Products, 69 N.J. 123, 129-130

(1976);Association Group Life, Inc. v. Catholic War Veterans of U.S., 61, N.J. 150, (1972); Palisades Properties, Inc. v. Brunetti, 44, N.J. 117, 130 (1965). As a corollary to that proposition, the supreme court of N.J. commented that it is reasonable to imply that neither party to a contract shall injure the right of the other to receive the fruits of the agreement. Onder-donk, Supra, 85 N.J. at 182 (citations omitted). In the instant case, it is very clear that Respondent intentionally and arrogantly indulged in BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING AGREEMENT DUE TO PETITIONER'S IMPLIED CONTRACT AS STATED IN EMPLOYEE HANDBOOK, AS WELL AS the EXPRESSED ONE MONTH'S NOTICE WRITTEN CONTRACTUAL AGREEMENT, BY FIRING THE PETITIONER MOST UNFAIRLY, EVEN WHEN ALL BUISNESS INTERESTS OF THE RESPONDENT WERE FULLY MET BY THE PETITIONER. The petitioner fully complied with the doctrine of exhaustion of remedies by following RESPONDENT's OPEN DOOR POLICY

before suing the RESPONDENT. The doctrine of exhaustion is well established in New Jersey. Ward v. Keenan, 3 N.J. 298 (1949). The rule has been applied to members of labor unions or other voluntary organizations seeking reinstatements or damages from the organizations. Jorgensen v. Pennsylvania R.R. Co., 25 N.J. 541, 556 (1958) (citations omitted). The rule of exhaustion has also been applied to suits arising under school laws. See Redcay v. State Board of Education, 128 N.J.L. 281, 285 (Sup. Ct. 1942). It has also been applied to cases arising under the Civil Service Act where employees claimed to have been illegally discharged. Jorgensen, Supra, 25, N.J. at 557. (citations omitted). The rule has also been applied to administrative bodies under the zoning laws. Id. at 557. (citations omitted). As previously noted, in situations involving collective bargaining agreements, it has long been the rule in New Jersey that the aggrieved employe must exhaust the remed-

ies provided by the agreement before resorting to the court for redress. see Jorgensen v. Pennsylvania R. R. Co., 25 N. J. 541 (1958); Thompson v. Joseph Cory Warehouses, Inc., 215, N.J. Super. 217 (App. Div.-1987). This principle is no less applicable here where the rights asserted by the petitioner are contained in an employe handbook. Courts in other jurisdictions have consistently held that breach of contract claims based on employe handbook are barred when an employe fails to exhaust the handbooks grievance procedures. See e.g., Schnelting v. Coors Distributing Co., 2 I.E. R. Cases (B.N.A.) 1451, 729 S.W. 2d 212 (Mo. Ct. App. 1987); Dahlman v. Oakland University, 3 I.E.R. Cases (B.N.A.) 1765, 432 N.W. 2d 304 (Mich. Ct. App. 1988); Plummer v. Hummana of Kansas, Inc., 715 Fed Supp. 302 (D.Kan. 1988). See also Suburban Hospital, Inc. v. Dwiggins, 5 I.E.R. Cases (B.N.A.) 693 (Md. Ct. App. 1990), Cert. granted, 321 Md. 46, 580 A. 2d 1066 (1990). When applying state law in diversity cases, each federal

court functions as a proxy for the entire state court system, and therefore, must apply the law that it conscientiously believes would have been applied in the state court system, which includes the state appellate tribunals. See Clark, State Law in the Federal Courts: The Brooding Omnipresence of Erie v. Tompkins, 1946, 55 Yale L.J. 267, 290-95. See also, 19 Wright, A. Miller & E. Cooper, Jurisdiction and Related Matters, 4507 (West 1982). A federal court sitting in deiversity must determine issues of state law as it believes the highest court of the state would determine them, not necessarily as they have been decided by other state courts in the past. See id. See also, Weiss v. George C. Rothwell, Inc., 496 F.2d 384 (3d Cir. 1974).

Due to all these reasons, this honorable court should rule the employe handbook to be legally binding on the Respondent in the instant case because the petitioner very faithfully complied with the Doctrine of Exhaustion remedies as stated in Respondent's

OPEN DOOR POLICY, and that petitioner was retaliated upon by the Respondent by firing him and hence petitioner's firing should be ruled as illegal and the petitioner should be reinstated to his employment by court order. The court should also rule in favor of the petitioner for collection of all damages and costs from the Respondent.

THE PETITIONER HAS VERY CLEARLY MADE A PRIMA FACIE SHOWING RACIAL EMPLOYMENT DISCRIMINATION IN HIS CASE. Hence, the lower courts - State as well as Federal are grossly in error for not granting a Trial in the instant case because racial employment discrimination under title VII is not permissible. A similar case, DOCKET NO. 89-909-407CZ,JOSEPH MARTIN V. INTERNATIONAL BUISNESS MACHINE is on trial before judge CYNTHIA STEPHENS in WAYNE COUNTY CIRCUIT COURT. The plaintiff, Mr. Joseph Martin alleges that he was denied promotions, salary increases and appropriate career counseling because he is black. Plaintiff's attorney claims that IBM'S OPEN DOOR POLICY IS A "SHAM", AND THAT MR. MARTIN WAS VERY

UNFAIRLY TREATED DUE TO HIS RACE, WHEN HE FOLLOWED OPEN DOOR POLICY RIGHT UPTO THE TOP, i.e., to IBM'S Board Chairman, Mr. Akers, and that the IBM Chairman, "put a rubber stamp to a form letter". The instant case of the petitioner is very similar to the Joseph Martin V. IBM'S case on trial. Therefore, RES-JUDICATA is not the answer in the present case which should have been decided by a full and fair jury trial in order to fully adjudicate the matter.

AGE-BIAS LAWSUITS: The petitioner wants to bring to the attention of the Honorable Court a recent decision reached by the Court in ASTORIA FEDERAL SAVINGS AND LOAN ASSOCIATION V. SOLIMINO, The United States Law Week, 59 LW 4616, (1991). The court ruled unanimously that a state civil rights agency's finding that a company didn't engage in age discrimination in employment doesn't bar a worker from filing an age-bias suit in federal court.

The instant case is very similar to this decision where the petitioner's attorney

erroneously omitted to file the age discrimination count in the Wayne County Circuit Court but the petitioner is requesting to litigate this matter in the Federal Court. Hence, petitioner Rajendar Singal requests that the Honorable Court should allow his Age-Discrimination count to be litigated in the Federal Court.

Wherefore, the petitioner Rajendar K. Singal respectfully submits that JURY TRIAL should be granted to resolve all the questions in the instant case, and further this honorable court should rule that petitioner's firing was illegal due to implied contract in the employee handbook and that he should be re-instated to his employment by Court Order and that all damages and costs in the instant case be paid to the petitioner by the respondent.

Respectfully Submitted,

By: Rajendar K. Singal

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